IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1085 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES : YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? NO : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO : NO

5. Whether it is to be circulated to the Civil Judge? NO : NO

MAHENDRA HARILAL SHAH

Versus

PRAMUKHSHRI

Appearance:

MR RV DESAI for Petitioner

MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution, at the instance of the original employee, who challenges the judgement and award passed by the Labour Court, Surendranagar in Reference [LCS] No.129/90.

2. Under the impugned judgement and award, the Labour Court has rejected the reference wherein the workman had claimed reinstatement with backwages.

3. Before discussing the merits of the present petition, it is desirable to bear in mind the principles laid down by the Supreme Court in the context of the scope and ambit, and the powers and limitations of the High Court, while exercising jurisdiction under Article 227 of the Constitution of India. The Supreme Court, in the case of Mohmmad Yunus v/s Mohammad Mustaqim [AIR 1984 SC 38] and Khali Ahmed Bashir v/s Tufelhussein S. Sarangpurwala [AIR 1988 SC 184], has held that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

4. The case of the workman in his claim statement at exh.3 was to the effect that he has been working for about 14 years as a peon in the House Tax Department on daily wages of Rs.22=76 ps., that he has been terminated without any fault on his part by oral direction on 13th March 1989, that no regard has been given to his seniority, and fresh recruits have been taken in his place.

5. The employer - Surendranagar Joint Nagarpalika has by its written statement exh.6 contended that the workman was employed on a temporary basis and as a daily wager on the post of a peon, that he was habituated to irregular attendance, that the employer has not terminated the services of the workman, but the workman has himself abandoned the services as a daily wager, and that even earlier in Reference No. 492/84, the Industrial Tribunal has rejected the reference of this workman for being absorbed into the regular cadre of a peon, on the same ground namely, habitual absentism from service.

6. The impugned judgement and award is based mainly upon two factors. Firstly, the Labour court has taken into account the observations made in the judgement of the Industrial tribunal in Reference No. 492/84 where the Tribunal had recorded findings of fact that the workman is extremely irresponsible in attendance, and for the most part remains absent, and that therefore, he is not entitled to be absorbed into the regular cadre.

On the facts of the case, the Labour court has found that the workman has not attended for 240 days or more in any one year of his service.

What requires to be appreciated is that the workman himself has produced his own version of his attendance record in respect of only two years namely, 1985-86 and the year 1987, in respect of which his attendance is less than 240 days in each of the years. Thus, on the documents relied upon by the workman himself, the Labour Court found that he has failed to prove attendance of more than 240 days.

The Labour Court then referred to the evidence led by the employer on the question of attendance and found his attendance as under :-

In the year 1978, only 26 days in January of that year. In respect of the year 1979, only 27 days in January of that year. In respect of the year 1980, less than 240 days. In the year 1981, only 13 days in January of that year. In the year 1982, only 18 days in April and 10 days in December of that year. In the year 1983, only 29.1/2 days, no attendance for the years 1984, 1985 and 1986, in the year 1987, only 9 days, in the year 1988 only 232 days, in the year 1989 complete attendance in January and February and only one day in March of that year. Thus, on the basis of the evidentiary material proved and established on record, the Labour Court found that the workman had not put in more than 240 days in any one year.

These are findings of fact based on evidentiary material on record, in respect of which this Court has no jurisdiction to interfere in a petition under Article 227 of the Constitution, unless the same is shown to be perverse. In this context, it is not even suggested that such appreciation of evidence is perverse.

7. However, learned counsel for the petitioner seeks to place reliance upon a decision of the Supreme court in the case of Workmen of American Express International Banking Corporation v/s Management of American Express International Banking Corporation [AIR 1986 SC 458]. In this case, the Supreme Court had occasion to examine the scope and ambit of section 25-B [2] [a] [ii] of the I.D. Act. The Supreme court in this context considered how period of 240 days should be construed for the purpose of this statutory provision. The relevant discussion is found in para 5 of the said decision wherein the Supreme Court had occasion to observe as under :-

"The expression which we are required to construe is `actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc."

[Emphasis supplied]

The ratio of the aforesaid decision is only to the effect that the said expression should mean not only the actual days on which the workman had worked physically, and had actually attended the job, but should include in the computation those days for which he had been paid wages either under express or implied contract of service, or by compulsion of law. I am certain that there cannot be any controversy about the principle laid down by the Supreme Court. However, what is required to be noted is that this principle cannot be blindly applied to the case of those employees who are admittedly daily wagers, and are admittedly paid wages only for those days on which they actually worked.

Decisions of the Supreme Court are not to be blindly followed or blindly applied, but must be construed and must be applied in the context of that decision, and in the context of the controversy the Supreme Court was required to deal with in the decision in question. This principle has been laid down in the case of [1] Madhavrao Scindia 1971 (1) SCC 85 followed in C.I.T. v/s Sun Engg. Works 1992 [4] SCC 363 - Para 39.

In the context of the Supreme Court decision in the case of Workmen of American Express Banking Corporation [supra], it must necessarily be found that the period of 240 days is not to be regarded only as the period during which the workman had physically attended duty, but for the specific purpose, also the period for which he was paid wages to which he would otherwise be entitled to.

On the facts of the case, there is no controversy that the workman being a daily wager on a temporary basis, would have been paid and was in fact paid only for the specific days on which he attended duty. It is not even the workman's own case that he received wages for

Sundays and other holidays [unless he happened to actually attend duty on that day]. The last contemplated possibility however is next to an impossibility because the employer is Surendranagar Joint Nagarpalika, who is extremely unlikely to call a daily wager to attend to duty on Sundays and national holidays, when the administrative and other staff of the Municipality would themselves be on holiday. In any case, since the petitioner has not made out any case as to how many Sundays and national holidays the petitioner actually attended duty, this is a mere submission in the abstract without any foundation of fact.

Even otherwise, as a daily wager, in case the workman had attended work on Sundays and national holidays, he would have been entitled to wages for that day not because they are paid holidays, but because he has in fact worked on those days [as a daily wager].

actually attended by the workman is, as aforesaid, a mere abstract contention without any basis in reality.

8. In the premises aforesaid, there is no substance in the present petition and the same is therefore dismissed. Rule is discharged with costs.

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